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# THE FUNERAL INDUSTRY:

AN OVERVIEW OF THE PROFESSION, WITH EMPHASES  
ON LEGAL ASPECTS AND LITIGATION BROUGHT  
AGAINST THE INDUSTRY

Dalen McVay

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Dealing with the deceased is an ancient practice that has held people's curiosity for thousands of years. Funerals and death are usually objects of a wide variety of reactions, whether through emotions or simply amusement. "The term funeral service undoubtedly conjures up different thoughts and ideas to each person who hears the phrase" (Professional Training Schools, 1996, p. 1). As Leroy Bowman notes, "To discuss funerals is not the proper thing to do in some social circles, and yet the subject is of considerable interest" (1959, p. 1). To many, the thought of working with corpses on a daily basis seems depressing, mundane, or maybe even disgusting. In The Corpse, A History, Christine Quigley has an interesting view of death:

"Human remains, in the form of a body or skeleton, rarely fail to evoke a passing thought about death. For those in the death professions, a corpse may represent making a living. For those in the health professions, a lifeless body may represent failure. For the rest of us, the symbolism of the dead lies somewhere in between" (p. 9).

Many individuals in society even today know little about the profession, and it is quite possible a large number of them don't care to know. "Our culture has many taboos about dying and death. As a result, many people know little about something they will inevitably encounter—certainly in their own life but likely in the lives of their family and friends" (Searl, 1993, p. 3).

Assumptions are that funeral directors are elderly men, dressed in long black coats and tall hats, chasing ambulances to retrieve mangled bodies, all while trying to make a buck. Morticians and the funeral industry have constantly been the source for comic roles and even humorous books such as "The American Way of Death," (Mitford, 1963) in which the author depicts scenes of exploitative workers taking advantage of the elderly in funeral parlors, explaining the importance of an expensive casket. The

profession is seen by many as scandalous, greedy, or uncaring. The evolution of the profession has done little to change the minds of society, although conscious efforts have been made to educate and/or ease the minds of the wary. Some progress has been made however; “As a result of a long slow development, with its roots deep in the history of Western civilization, it is the common American mind today that the dead merit professional funeral services from a lay occupational group” (Habenstein & Lamers, 1955, p. 4). It is now common practice for individuals to allow funeral workers to dictate the funeral settings, care for the body, and perform the final ceremony in honor of the deceased. Many of these services that professionals are now called upon to perform are:

embalming, the preparation of the body for final viewing, a waiting period between death and disposition, the use for everyone of a casket that is attractive and protects the remains, a dignified and ceremonious service with consideration of or the feelings of the bereaved, and an expression of the individual and group beliefs. Finally, convention demands burial in the ground or other disposition in a dignified place and manner that reaffirms those beliefs, insofar as not contrary to public health, expresses the esteem of the bereaved, and satisfies them that they are acting in accord with their means and that esteem (p. 4)

In The Social Organization of Death, Julie Prior notes “The function of the funeral director is to be technical adviser, agent, contractor, master of ceremonies and custodian of the body for his client” (1989, p. 160). It should be noted however, that these are primarily American customs and traditions and may vary within different religions and/or cultures. Funerals and funeral practices within the industry vary across different groups tremendously. Whether mummification or traditional embalming takes place, individuals alike are challenged to face emotions such as grief, sorrow, and must move through the bereavement process. It is the role of the funeral director/embalmer to ensure that family wishes are met, and at times this can be an extremely difficult task.

“Today, when we [funeral directors] hear the term traditional funeral service, those who deal in this profession are aware that this term is used to loosely convey some types of service, usually with the body present, but little else in the way of consistency from one funeral service to the next. The numerous options available to the family today have practically forced the removal of the term traditional from funeral service (Professional Training Schools, p. 1).

Like many other health service organizations, funeral homes and directors are faced with the challenge of dealing with the public at a very sensitive time. Funeral service is a profession that there is little room for error, as it is a time that people need perfection. Facing the loss of a loved one is a tragic occurrence, and funeral directors are faced with the responsibility of helping those that are in need while providing support and care. Like any other businesses, a funeral home is expected to treat customers with respect, give ethical advice, and cater to customer's needs or desires. Funeral service is a business however, that incorporates many different scholastic areas. When studying funeral service, courses range from: accounting, management, sociology, anatomy, pathology, history, statutory law, mortuary jurisprudence, embalming and some courses related to planning, e.g. mortuary variability.

Throughout this paper, I plan to examine some specific funeral home aspects, portraying instances in which Management, Sociology and Community and Regional Planning all play an integral role and have or could be the direct cause of lawsuits within the industry. These three areas of study contribute directly to the operation of a funeral home and/or cemetery, and are crucial for funeral homes to be successful. Each of these disciplines is practiced continually in the funeral industry, and has played prominent roles in the development of the profession. All three areas will have an impact on the future of the industry as well, shaping and dictating the direction the profession will lead.

The funeral industry has also increasingly been becoming a target of litigation. In recent years, funeral homes have found themselves being targets of lawsuits more than ever before. These counts are now ranging from everything from necrophilia to overcharging clients to malpractice. Like any other business, there will be those looking to make a quick buck or take advantage of certain situations. A funeral home is a business just like any other, making profits on merchandise and services for revenue. The mortuary must pay bills, pay salaries, and pay taxes just like “regular” businesses. The disheartening fact is that sometimes individuals take advantage of grief, and in the processes take advantage of individuals that may be incompetent at the specific time to make wise decisions. This is the cause of the majority of lawsuits, filed namely for overcharging those who may be incompetent. Death services are primarily an aspect of life where the majority of individuals aren’t extremely educated. Planning a funeral is a difficult and time consuming process; something that most don’t in advance. Planning for funeral services is usually performed after a death has occurred, which leads to discomfited parties who wish to make hasty decisions.

“Unique among buyer-seller relationships is that between the funeral director and his customer. Into it the representative of the family enters with unusual motivations and under abnormal pressures. The undertaker, too, in his relations with the family of the deceased, plays a role in his own eyes unlike that of any other seller. In addition, the rules of the game are not comparable to the generally accepted regulations governing buying and selling”(Bowman, p. 29).

Directors can play off of these unfortunate times of grief, with words or advice such as “Don’t you want the best for your loved one,” or “How do you want your loved one to be remembered?” It has been proven that there are many different ways that a pre-need counselor can take advantage of certain situations.

“The funeral home is a veritable marketplace of goods and services, and everything that is offered comes with a fee—caskets from \$400 to \$11,000; vaults from \$400 to \$12,000; and cremation containers at over \$3,000. It can be a one-top shopping extravaganza offering merchandise and services that add up quickly—all the more reason for you to shop judiciously at a non-crisis time” (Cochran, 2000, p. 89).

As you can see from above, there are an extensive number of items that the majority of individuals purchase. Funerals rank among the most expensive purchases many consumers will ever make. A traditional funeral, including a casket and vault, costs about \$6,000, although "extras" like flowers, obituary notices, acknowledgment cards or limousines can add thousands of dollars to the bottom line. Many funerals run well over \$10,000 (FTC website, 2002). In addition to those noted above, director fees, apparel, programs, chapel fees, hairdressing fees, pick-up fees, burial fees, the list goes on and on. It is obvious that these expenses add up very quickly. In turn, offering extras that aren't needed or describing more extravagant caskets with more detail are simple ways to “make a larger sale.” Many funeral homes employ pre-need counselors who aren't licensed directors or embalmers, but are employed mainly to sell pre-need services. Many of these counselors are paid on commission, earned by the amount of dollars they seduce. This isn't to say that all counselors are bad or manipulative, just noted to portray how a large number of counselors earn their paycheck, and sometimes how easy that can be.

Some people believe that funeral homes are nothing more than a huge rip-off. Henry Wasielewski, director of the Interfaith Funeral Information Committee based in Arizona is one who holds these negative beliefs: “This is a really scummy business” (National Catholic Reporter, 2001, p. 1). A former priest, Mr. Wasielewski campaigns to

keep the public informed about funeral service merchandise. He believes that mortuaries are corrupt, only looking to take advantage of people at any given time.

“I know from experience that the funeral and cemetery operations—the death merchants, if you will—are a potent marketing and political force. They have over the years succeeded in creating an exclusionary business atmosphere in which they strictly limit competition and control pricing (p. 2).

Many individuals feel the same way about funeral establishments as Mr. Wasielewski. Although the majority of funeral homes treat consumers honestly and fairly, the few that take advantage of people at this vulnerable time portray the industry in a negative light. The lawsuits filed against the funeral industry are in record numbers, the majority of the lawsuits stemming from deceptive practices of a minority of funeral workers. Once again, many funeral homes today are still run by and employ good people who genuinely care about their clients. The majority run a clean business and doesn't have to deal with lawsuits because services are performed correctly. Other homes simply make mistakes. It is truly sad that a select few people give the industry a bad name.

### History of the Profession

The actual profession of embalmer/director in the United States began in the early 1700's. Traditionally, there had been numerous individuals involved in the process after death. Ministers played the most prominent role, dictating who was to perform what duties, read the eulogy and pray at the service. In the early 1700's, cabinet-making led to the formation of a funeral director. “As with most emerging vocations, funeral directing did not spring forth full-grown, but in its earlier stages evolved by slowly adding to itself specific funeral tasks previously carried out generally and largely by other occupations” (Habensteim & Lamers, p. 225). “In the Colonial Period, cabinet making was also found



with upholstering, and to this combination undertaking occasionally was added” (p. 227). In the beginning, cabinet makers only designed the coffins, and then eventually led to become the provider of personal funeral services as well. Many of these cabinet/coffin makers eventually doubled as undertakers. The profession expanded to combine the cabinetmaker and undertaker as one. These men began to dominate the service, providing not only coffins but eventually performing all of the service as well. This profession became scrutinized from the beginning, with the public criticizing the cabinet-makers of trying to take advantage of the public to make more money. The majority of this occupation became taken up by men who were presently in the cabinet-making business who had transformed into full funeral services. The men were in charge of not only making cabinets, but for being in charge of funeral services as well. In The History of American Funeral Directing, the author notes:

“These craftsmen were not likely to have been English trained in the undertaker’s trade; possibly only a few had mastered the art of furnishing all manner of funeral paraphernalia. But the rapid expansion of America and the absence of clear and uniform church regulations over funerals provided an opportunity for craftsmen to develop these skills as added specialties to their current occupations. Moreover, such actions were squarely in keeping with the spirit of industry and enterprise characteristic of colonial society” (p. 227).

Soon after, “The appearance of the furnishing undertaker took place concurrently with the emergence of the small combination operator, the cabinet maker, carpenter, sexton, or liveryman who performed funerals as a side line and who would not be likely to have the necessary supplies and paraphernalia at hand” (p. 230-31). This practice soon gave way to the idea that a cabinet maker, supplying all material needs, could give way to an individual to expand funeral practices. “Not only was the field opened wider to new practitioners, but personal service, unhampered by obligations to craft or trade could

become a central preoccupation of the undertaker” (p. 232). The vast majority of these craftsmen were men, who until recently dominated the profession.

### WOMEN’S ROLE IN THE INDUSTRY

Women’s roles were minimal during the early period, although not totally obsolete. A few women craftsman entered the trade, deviating from the passive role most women played. This practice by women never really expanded. “Despite their early appearance in the emerging occupation of undertaking, women became less conspicuous in such endeavors as the years passed. As the number of services expanded and funerals involved a wider range of tasks to be performed, and as undertaking began increasingly to reflect the spirit of business enterprise, other categories of tradesmen, craftsmen and functionaries came to dominate the occupation” (p. 238). Women today are increasingly becoming more actively involved in the funeral industry in the United States. “Though there are no statistics available based on recent empirical research there appears to be an ever increasing interest of women in funeral service both in licensed and non-licensed status” (Fruehling, 1977, p. 379). Instead of performing only clerical duties, hair dressing duties, and piano playing; many women are becoming licensed funeral directors and embalmers, a change that is growing rapidly. Although the majority of these women are in bereavement counseling, many are entering into the practice of embalming, an occupation solely held by men in the past. Sally Cline notes, “Whereas paid professionals in the bereavement business are almost all women, those who care for the corpse are almost all men” (1995, p. 116). Although this still is the case, many women now act as both licensed funeral directors and embalmers. Women also make up a larger portion of the non-licensed side of the industry.

“An even greater number of women are involved in funeral service in a non-licensed capacity. They serve as consultants, assistants, office managers, receptionists and secretaries. In these functions they have a great deal of contact with the families being served and the general public” (Fruehling, p. 379).

Licensed embalming is the area of funeral directing that has been the hardest for women to get into. The reason can be attributed directly to stereotypes. “Male undertakers constantly tell us we are too delicate to lift bodies, and too feminine to conduct and arrange funeral services. Congregations wouldn’t like it. They want to see a proper man heading the dead. They don’t see us as suitable” (Cline, p. 116). Bereavement counseling on the other hand is useful caring work, i.e. fit for females (p. 116). Women can excel at the profession just like any man, and at times seem more suitable for the profession. “As funeral directors and embalmers, women can often add a special dimension to those they are serving as they determine their needs to work through and resolve their grief” (Fruehling, p. 379). Another positive for women entering the industry is noted, “Compassion is the main attribute women directors have” (Cline, p. 129). Communicating is also a necessity in the practice. “Women are good at communicating. People want you to listen right through from the first moment when the body was taken ill to the actual moment of death. Patience is essential. A few men can do it but many others can’t” (Cline, p. 129). As you can plainly see, women possess many virtues that can be considered beneficial to the funeral industry. The largest obstacle women are facing today is the fact that a large portion of funeral establishments are now corporate owned. The largest corporations in the industry employ very few women managers. As the number of women in the industry is increasing, this may change over time.

## DIVERSE ETHNICITIES AND RELIGIOUS PRACTICES

Throughout the funeral profession, directors are faced with the task of performing many different ceremonies, because of different races, backgrounds, religions, etc. Death and practices related to the body after death vary greatly between these different groups, and the funeral home is expected to perform according to the culture (as allowable under United States laws and regulations). Many traditional American customs would be considered unsacred in other countries, while many Americans view traditions of other countries as vulgar or obscene. In Mexico, the culture

“may not only be characterized by an interest in death which strongly contrasts with denial and rejection in American culture, but also may be characterized by a pervasive anxiety about man’s capacity to dominate and control his environment—again, in sharp contrast with the United States” (Kalish, 1972, p. 73).

Every aspect of a funeral or preparation of a funeral can differ. The notification of death, removal, preparation of the remains, dressing and casketing, viewing, and the actual services vary across these different religions and ethnic groups. The concept of death is another aspect viewed differently by different societies. “Death, however, is at least one point in human existence where few of the numerous practices concerned with personhood, identity and individuality tend to converge” (Prior, p. 153). An assortment of attitudes can be found relating to death itself. Native American tribes “tend not to fear it, but to see it as part of the natural life cycle, a companion, not an enemy; ... it might happen at any time” (Jones, 1997, p. 11). Many in Australia “see death not as natural, but as an evil intrusion brought about the magical powers of enemies” (p. 11). Many believe that there is no such thing as a natural death, but seen as a punishment, or relief from suffering. In Ireland, death shows “issues that have possibly lain dormant for the

entire length of a human existence are awarded singular attention, for death is commonly regarded as the point at which body and soul are divorced (Prior, p. 154). Jewish funerals are not seen as finality. Funerals are an integral part of life and therefore a spiritual experience for relatives and friends. Jewish funerals typically have no viewing period, no embalming, wood only caskets and allow no concrete burial vaults (Cochran, p. 98). Those of the Islam religion mandate a relative of the deceased must wash the body immediately after death. The deceased is then removed and “placed in a deep grave on their right side, facing Mecca” (the holy city of Islam) (p. 106).

Other cultures perform rituals that are unheard of by the majority of Americans. In the Ojibway and other Indian tribes, it is the custom to cut off a lock of hair of a deceased child, and wrap it in paper and ribbons. They combine the hair with some of the child’s playthings and string them together. They then commence to carrying it like a doll. “They give this doll a name signifying ‘misery’ or ‘misfortune’, and which may be translated ‘the doll of sorrow’. This lifeless object takes the place of the deceased child. The mourning mother carries it about for a whole year”. The idea was the mother was helping the child’s soul continue the journey to the afterlife (Barley, 1995, p. 181).

These few examples show the assortment of funeral ceremonies and rituals. There are hundreds of more examples of diversity in events after death, varying with different types of groups, moral beliefs, and traditions.

### Service Corporation International

Litigation against the funeral industry has become even more evident since the takeover of Service Corporation International (SCI). SCI is the largest provider of funeral related services and goods in the nation. In 1998, SCI reported \$2.875 billion in

revenues and a net income of \$342 million (PR newswire, 1998, p. 3). A very large portion of this industry is now owned by this corporation. As of September 30, 2002, the company and its affiliates operated 3,188 funeral service locations, 485 cemeteries and 78 crematoria, making it the world's largest funeral service company (Sutton, 2002, p.1). Not only are they the largest funeral provider, they own many of the world's most prestigious funeral establishments. Some of these include the homes that conducted services for John F. Kennedy, Winston Churchill, John Lennon and Jacqueline Kennedy Onassis. Many individuals don't even know that they are involved with this corporation, as SCI allows funeral homes to keep their original names. As with most corporations, SCI looks to make a substantial profit. This has had a direct impact on the business as a whole. An assistant to that author of The American Way of Death Revisited had this to say about the giant corporation, "SCI has made price gouging state of the art" (Bryce, 1999, p. 2). She goes on to note:

"They've been able to take the emotions that make people spend more—guilt and fear of death—and have played those like an orchestra and have made tremendous amounts of money. They are taking advantage of consumers on all fronts, by secrecy, by their ability to control regulations and their ability to give money to politicians" (Bryce, p. 2).

Pierson Ralph, the president and director of the Memorial Society of the Southwest, says "SCI's prices, generally, are obscene. They are clustered at the very top of the comparative prices. They are exorbitant everywhere you look" (p. 2). In the past, funeral directors were considered caring individuals who knew the community well, serving on city councils, school boards, etc. Funeral services are now cautiously considered and examined carefully. This is due in large part to the exposing of the industry as a money-maker, not a caring, professional service. "The growing collusion

between church officials and the mortuary chains has been nourished by the increasing domination of the \$25 billion funeral industry by corporate chains” (Armstrong, 2000, p. 2). Many funeral directors/counselors are now regarded as manipulative and/or uncaring. Service Corporation International is a corporation based out of Houston, TX, and now owns a very large portion of the funeral industry. Their involvement not only thrives within large cities, but owns a large portion of businesses within smaller communities as well. Many individuals view the takeover as a blow to the industry, whereas community funeral homes cannot act on their own behalf forced to meet the standards set by the corporation itself. The time of bereavement can be very hard on an individual; during this time people are both sensitive and very vulnerable as well. This leads many directors to be manipulative and take advantage of the situation, especially, it seems, after the corporations have taken over. Corporations are facing a large number of lawsuits today. Society sees these corporations as money making machines, looking only to take advantage of the situations. In the industry corporations are seen as unscrupulous businesses whose markups are completely unreasonable. Some of these lawsuits are legit and portray these corporations as deviant in many aspects. As Armstrong Williams notes:

“The funeral director for a giant corporate mortuary will approach your local pastor or priest and say words to the effect of, ‘We were going to give \$5,000 to the Red Cross this year but, you know, we decided why not keep it in the neighborhood. I notice your parish doesn’t have a bus. Now, I know the money won’t buy a bus but we thought it could help. I’ll just write out this check to you and trust that you’ll know the best way for it to help the church.’ The pastor starts to figure I’d better send some bodies to that mortuary or they might not donate to my church again” (2000, p. 1).

SCI has consistently been the cause of thousands of lawsuits, and the rates are increasing every year. Lawyers in Florida are suing SCI, claiming the company sold “an exorbitantly expensive funeral to and elderly, mentally incompetent widow” (Bryce, p. 2). In Miami, the corporation was accused of digging up bodies and dumping them in the woods to make room for new burials. The lawsuit claims that cemetery workers broke open burial vaults, removed the bodies and dumped them into the woods to make new space for new interments. It also alleges that workers smashed other vaults, buried remains of different individuals together, and placed individuals who had purchased side-by-side burial plots on top of one another. There are currently over 700 plaintiffs’ in the just this case alone (Sutton, p. 1).

Other lawsuits are just as disturbing. In Washington, two families are suing SCI, claiming that the funeral home switched their loved one’s bodies, and cremated the wrong one. They used the right casket and apparel for one body that belonged on the other. When the funeral home manager was notified of the incident, he was reported to say that the funeral home would “spend whatever money it takes to prove you are mistaken” (Bryce, p. 3). SCI was found at fault and blamed a company that transported the bodies.

Service Corporation has been scrutinized on more than just funeral home aspects. Legal action has been brought against the corporation from a business sense in way of investors in the company.

“Perhaps the most serious allegation of the lawsuits pertains to SCI’s management of billions of dollars worth of prepaid funeral contracts. The suit alleges the SCI did not tell investors that it was losing money on many of its prepaid funerals. The suit alleges the company has a ‘multimillion dollar backlog of unprofitable pre-need funeral contracts’ and that SCI has kept the monies consumers have paid on those contracts in bank certificates of deposit and ‘other under-performing’



investments unable to grow sufficiently to cover the costs of performing the funeral services in the future” (p. 4).

From a business aspect, SCI has completely dominance over the industry. Hardly any competitors even look into the market, because funeral goods and services aren't items that people shop around for. SCI acquires as many establishments as possible, banking on the realization that eventually everyone will need the services especially as America keeps aging.

New York City's commissioner of consumer affairs claims that of 28 Jewish funeral homes in New York, 14 are owned by SCI. In those 14 establishments, their prices are on average fifty percent higher than a Jewish funeral at an independently owned home (p. 5).

These are just a few of the thousands of lawsuits that have been brought against Service Corporation International. SCI isn't the only player in funeral service to have been convicted of wrongdoings. There are a variety of different legalities facing the funeral system as a whole. Many of these lawsuits are frivolous, began by those in search of nothing more than money. A large portion of these lawsuits are completely unwarranted, by individuals looking to take advantage of the system. The remaining reports, however, are warranted and necessary to force the industry to remain honest and sincere. The funeral industry as a whole has come under criticism because of a few corrupt individuals. The legalities of these suits have been recorded by the Federal Trade Commission and the trade is closely monitored today. Everything from the initial pickup of the bodies to the actual service is under scrutiny by some, so careful consideration is taken in all aspects.

## ROLE OF THE FEDERAL TRADE COMMISSION

The Federal Trade Commission has set mandatory rules and regulations that any person affiliated with a funeral establishment must strictly adhere to. On April 30, 1984 the FTC adopted a rule known as The Funeral Rule (appendix A). It was revised on July 19, 1994. The purpose of the Funeral Rule is to inform consumers of funeral services practices. The FTC wants all prices disclosed in a certain matter. It was also established to allow consumers to choose only the services selected, not allowing them to be pushed into additional items/services. It is not intended to tell funeral homes how much to charge, how to arrive at overhead figures or to set a specific policy to set prices. Anyone associated with funeral goods must adhere to this rule. This includes: funeral providers—person partnership or corporation that sells or offers to sell both funeral goods and services; funeral service—any services or services used to care for and prepare bodies for burial, cremation, or other disposition, or used to arrange, supervise, or conduct the funeral ceremony for final disposition of human remains; funeral good—products sold directly to the public in connection with funeral services. The Funeral Rule requires you to give consumers accurate, itemized price information and various other disclosures about funeral goods and services. “In addition, the Rule prohibits you from:

- misrepresenting legal, crematory, and cemetery requirements;
- embalming for a fee without permission;
- requiring the purchase of a casket for direct cremation;
- requiring consumers to buy certain funeral goods or services as a condition for furnishing other funeral goods or services; and
- engaging in other deceptive or unfair practices” (FTC website).

The rule applies to both pre-need and at-need arrangements. This allows you to find out specific prices on goods and/or services over the phone. In addition, the funeral

home is mandated to give the consumer a GPL (general price list) and a (CPL) casket price list for you to keep. As you can see by Appendix A, the rule spells out information on embalming, cash advance sales, caskets for cremation, required purchases and additional information for what the consumer is entitled to, and what the funeral establishment is required to do. The funeral rule “also requires cemeteries to provide a written statement detailing the cost of the plot as well as any additional expenses, such as upkeep” (Readers Digest Association, 1994, p. 251). The rule is non-negotiable in its entirety, and the organization imposes heavy fines on businesses that are caught not following the guidelines set forth by the Federal Trade Commission.

### Burial Societies

Burial societies or Memorial societies are organizations designed to assist in the purchasing of funeral goods and/or services. “Such societies do not sell goods or services themselves, but for a small, one-time fee they will organize agreements based on your wishes with low-cost funeral providers who will take care of things at the time of your death” (Readers Digest Association, 1995, p. 164). Memorial societies often are “non-profit volunteer organizations that serve as advisers to consumers in preplanning their funerals, helping them find low-cost services in their vicinity. Funeral homes often offer lower costs to society members” (Haas, 1994, p. 98).

### Estate Planning and Living Wills

Estate planning is a very complex and ongoing process. The process “consists of assembling the various available legal devices, techniques, and strategies to accomplish two main objectives: the effective, orderly continuity of your affairs after your demise, and the maximum sheltering of your property against transfer taxes” (Platt, 1995, p. 9).

The problem here that most funeral homes face is the transfer of bills and/or property.

There are basically two phases that funeral homes must deal with regarding estate planning:

1. Post-mortem tax planning elections which can reduce taxations,
2. The administration and settlement of your affairs and the eventual transfer of your assets to your beneficiaries (p. 9).

Funeral homes deal with these problems primarily if the deceased has property during his/her death. Many times relatives bicker over items found on the decedent, whether it be money, jewelry, etc. Taxation is also a benefit during funeral expenses to the general public, although this also is a large portion of lawsuits that occur vs. the industry. Documentation has shown where funeral homes were proven responsible for lost items, valuables, etc. Many times proper documentation isn't recorded about the description and location of property of the deceased that is found. This alone is a major factor in lawsuits, caused by this simple negligence. Many individuals do not know what is required by law about items such as pre-need contracts, wills, etc. Most funeral establishments are willing and capable to elaborate on these contracts to allow an individual to gain insight into the process. "Most ethical funeral home operators are inclined to comply with the wishes of the deceased. In fact, the funeral director will be required by law to honor any requirements that are specified in a contract (Court TV, 1995, p. 409). Explaining these contracts truthfully to the general public would cut down considerably on this form of litigation.

## Extras

Extras are a way for a funeral home to gain additional income. They are considered common payments to the lay person, products or services bought only to better remember or serve their loved ones. In essence, many inconsiderate funeral directors or pre-need counselors use them as a way to have a consumer spend additional money on items that aren't necessarily needed. As the consumer union reports, "Some undertakers prove ingenious in finding ways to "enhance" funeral procedures with expensive extras" (1977 p. 110). There are a variety of funeral goods that can be considered extras. "The most common extras are: flowers, burial clothing, additional limousines, flower vehicle, clergy's honorarium, newspaper death notices, memorial books and cards, sympathy cards, acknowledgement cards, gratuities, sales tax, and transporting the body to a distant community (p. 111). Many of these extras are considered commonplace in funeral today, although the majority of these extras are overpriced. Although many of the extras mentioned above are used regularly, there are a number of additional items that may be purchased. "Death masks, crucifixes, Bibles, memorial flag cases, cemetery lights, veils, boutonnieres, or Mass card holders" can be an additional expense. These selling techniques often result in a lawsuit, with deviant funeral personnel taking advantage of those who are in bereavement. A perfect example of this type of treatment is as follows:

In central Florida, lawyers filed suit against an SCI funeral home after an aggressive salesman apparently took advantage of an elderly widow who had been mentally impaired by a stroke. After several visits over a two-month period, the salesman obtained a series of checks and a pre- paid funeral contract for funeral goods and services costing more than \$125, 000. According to the lawsuit, filed in Polk County, Fla., the funeral package included a casket costing \$39,785 and a mausoleum costing \$52,738. The suit says the widow was "not mentally capable to understand the contractual arrangements" and that she relied

“solely upon the representations made by the defendants” (The Dying Giant, 1999, p. 2).

This is just a sole example of the many lawsuits that funeral homes are facing today. One individual in the industry exemplifies exactly how corrupt the industry can be. Once again, this is not always the case, but a good number of the lawsuits come from these actions. In San Francisco, four employees of a funeral home

“contend that they were required to commit numerous acts of fraud and dishonesty in order to sell burial plots and services to customers, many of whom were elderly widows and widowers, stunned by grief from recent deaths of loved ones (p. 4).

These individuals were told as “Family Service Counselors” that they would be required to console the bereaved, helping individuals in their time of crisis. Instead the plaintiffs’ told of accounts where they were taught to:

1. Sell burial products and services at higher or lower rates, depending on the race and ethnicity of the customer
2. Use intense sales pressure at a time when people were at their most vulnerable
3. Require employees to wear badges which gave the false impression of counseling degrees
4. Require sales counselors to visit homes no longer than 48 hours after a funeral in order to sell more burial sites to shocked, grieving relatives when they were most fragile.
5. Falsely telling clients that their employees liked their cemetery so much that they had purchased their burial plots there
6. Offering false placards to employees to place on tombs in order to perpetuate the fraud (PR newswire, 1998, p. 1).

Many unlicensed funeral service personnel work primarily on commission, which leads directly to these deviant acts. Some of these individuals do discriminate against race or gender, while taking advantage of someone who they are employed to assist.

## Malpractice or Negligence

After suits concerning financial aspects, probably the most notable lawsuits deal with malpractice, or mistreatment of a corpse. These lawsuits cover a large range of issues, from dropping corpses to removing body parts without proper authentication (Appendix C). The majority of these lawsuits relate directly to the act of embalming. The rules of embalming vary from state to state, and sometimes even cemeteries. There are three situations where it is required by law for the corpse to be embalmed. These are:

- When the body is to be transported across state lines
- When burial will be delayed (usually longer than 24 hrs)
- When the deceased died off a communicable disease (Readers Digest Assoc, p. 251).

Many of these lawsuits are completely unfounded, while others are genuinely sincere. Money hungry individuals constantly sue on the basis of negligence, when precise measures have been taken and performed to the best of a directors/embalmers ability. That is not to say that these atrocities don't occur. In Florida, a woman sued the local Clearwater funeral home for negligence. The woman and her attorney believe that her husband's remains were left to decompose in the funeral home for at least 40 hours without refrigeration and without being embalmed (Oneil, 2001, p. 1). Sloppy procedures were cited, showing neglect in caring for the corpse. Another recent lawsuit proclaiming negligence was cited in Wichita Falls, TX where parents sued two funeral homes over their son's interment, who happened to be a local television celebrity. SCI was again the corporation named in the lawsuit, after the parents discovered that their son's body "began emitting odors and oozing fluids that drew swarms of gnats" (1999, p. 1). The case claimed that the body was not properly embalmed, and that the body was

entombed anyway. In this case SCI was noted to have used an unlicensed and unsupervised apprentice to embalm bodies.

Other legal issues the funeral industry face deal with ashes. If ashes are not properly distributed, the funeral home has broken the law. In Las Vegas, 1998, two women sued the local funeral home for negligence dealing with remains. The two women alleged that the ashes sent to their home were not of their loved one, but of someone else. After calling the funeral establishment to report the error, an employee told her that "His ashes must be around here someplace." Again after calling the company to report the mistake, it was explained to the woman that these problems take time (O'Connell, 2000, p. 1). This is an example of another issue of negligence by a small party. Many torts brought against these businesses are caused by simple mistakes, but many of these mistakes prove costly.

### Zoning Requirements

A different type of lawsuits often occurs as a result of zoning requirements of a city or state. Funeral establishments are a type of business that many individuals would not like to live adjacent to. The result is often litigation against the building of such property on certain premises (Appendix B). The Board of Funeral Directors Association states that a building is considered a funeral establishment if:

It is a means of business used in the care and preparation for burial or transportation of dead human remains, or any place where any person or persons shall hold forth and be engaged in the profession of undertaking or funeral directing. It must be: a fixed place of business; have an address, ad in newspaper, phone number, and zoned commercial (1999, p. 4).

Many in society feel a funeral establishment would devalue their personal property, bring unwarranted traffic into residential areas, or cause other unwanted



nuisances. The majority of these cases are solved in city councils, through zoning board of adjustments. Other funeral service establishments such crematoriums, have also raised legal issues. In Sunnyvale California, local residents have filed a lawsuit to prevent Wyatt and Smith funeral home from constructing an on-site crematory. The residents of the city fear human ashes being released, a stink of burning flesh, and residents being forced to witness human bodies being loaded into the outdoor crematory. (Berton, 2002, p. 1). Other factors contribute to the resistance as well, “environmentalists connect the rising mercury levels in the region to the influx of burning dead men’s cavity fillings” (p. 2). A 1999 EPA report proved that “negligible amounts of carbon monoxide spewed from the typical crematorium—less than the average burger restaurant—but when bodies burn, they emit a slew of skunky toxins: chrome mostly, lead, nickel, and, most significantly, mercury” (p. 6). Other cities require a minimum distance a crematorium can be located in relation to residential property. The lawsuit filed in Sunnyvale cites the city as the defendant, claiming the Planning Commission “failed to give nearby residents fair warning on the crematorium, and that the extension to the funeral home violates zoning laws” (p 10). Presently, many family-owned funeral establishments were constructed before zoning laws were enacted. Other funeral homes fight to get property changed to a non-conforming commercial lot so the building permit can be obtained. Another reason that individuals would like to see funeral homes in industrial areas is parking issues. Funerals in residential areas often cause parking problems for the residents who reside in close proximity to the business. Thousands of cases similar to the Sunnyvale case are filed each year, examples of another way the funeral industry is facing litigation.

## Pre-Need Plans

Pre-need funeral preparations are also becoming more evident in today's society. Pre-planning your service allows you to specify exactly which type of services you want, select your own casket, goods, etc. Pre-need preparations also relieve the next-of-kin of having to arrange the funeral at such a difficult time. It also can guarantee the services that you select will be the one performed. "Pre-need funeral plans are a method for protecting your survivors from hard-sell tactics at the time of death" (Readers Digest Assoc, p. 165). Purchasing burial lots, caskets, etc. beforehand also allows the individual to buy at the current prices, and such goods can not increase in price regardless of how many years later the goods are to be used. Some plans can be purchased completely upfront; others allow monthly installments over a specific period of time. This is another facet of the funeral industry that has been scrutinized. "Each state has laws governing pre-need plans, but not all state laws are the same: some don't require that the entire payment amount be placed in an account; others allow funeral homes to keep the interest" (Haas, p. 98). Many times these pre-need accounts are sold by sales representatives, sometimes even going door to door. This is a primary reason many lawsuits regarding unnecessary sales are filed.

## Cemeteries

Cemeteries are not exempt in any way from litigation. Many cemeteries are improperly or unlawfully used, leading to lawsuits filed by families, funeral homes, or even the state. A large number of cemeteries have been purchased or built by the funeral homes themselves as a means for additional profit. As David Sloan notes: "another reason for establishing new cemeteries was financial gain" (1991). Most cemeteries have

strict laws requiring sealed caskets, vaults, etc. Others have been found to “say” that they are required when they are really not, allowing the funeral home to make another sale. A number of lawsuits have also been filed charging cemeteries reused burial plots. In Santa Fe Springs, California, a lawsuit was reported charging that,

Inspectors had visited the cemetery and found a dirt pile 7 feet high and 50 feet wide full of skeletal remains. It was estimated that [they] had reached capacity a decade earlier, and that some of the 3,000 burials had taken place in occupied graves. “We found out that many of our relatives had been dug up, and many of our family graves were recycled graves that someone else owned,” the family stated. Bodies had also been stacked as many as ten deep in a single plot, some in crushed caskets, some in no casket at all (Davis, 1999, p. 1).

This is a perfect example of how a cemetery can be corrupt as well. The cemetery is seen by most as the last place you would expect to find such deceit. It is supposed to be a haven to remember the deceased; instead consumers are being forced to worry if a plot even contains their loved ones. Many of these problems arise from a lack of burial space, with cemeteries consuming a large portion of the earth today. Many cemeteries often go unregulated, allowing companies to manage their own practices.

Another California cemetery faced similar charges after human bone fragments and casket pieces were found on their property. The cemetery had made new burial plots, by cutting across the existing graves of 48 decedents. The plots were then replaced with new bodies.

The cemetery was charged with grave desecration, unlawful interment of more than one body in a single grave without proper authority, failure to properly dispose of human remains and failure to inter cremated remains, failure to keep adequate records of ownership and transfer of plots, and the unlawful expenditure of endowment care funds (PR newswire, 2001, p. 1).

These are just a couple of examples of ways that cemeteries can be deceitful. If a cemetery runs out of space, it is forced to either purchase more property, or lose revenue

altogether. The majority of these cemeteries are restricted by legislation within the city or state. "Cemeteries, in particular, are subject to zoning and other land-use requirements of the law that affect other businesses (Smith, 1996, p. 46). Stripped of the fact that these pieces of property are used to dispose human remains, the "cemetery is essentially a real estate development operation *cum* sales organization *cum* property maintenance system (p. 46).

### OTHER REASONS FOR LITIGATION

There are numerous other violations or deceitful practices that funeral homes are being held accountable for. Files have been charged for having embalming work done by an apprentice without licensed supervision. For the first six months of an apprenticeship, he/she is not allowed under law to embalm a corpse without a licensed embalmer present. Many suits have been filed by families who have had loved one's remains embalmed by unauthorized personnel. Others have filed complaints against funeral homes for unlicensed embalming preparation rooms. These establishments are mandated by law to be inspected by the state funeral directors association board on a continuous basis. Each state has a board of directors of funeral personnel and rules and regulations each state is required to follow. Each state is different; although the board of directors of each state has a constitution and by-laws the funeral industry must follow.

As it has been clearly shown, the funeral industry is criticized in many aspects. It has been proven that litigation against funeral homes or directors increases tremendously each year. The general public has become aware of unethical practices, so the industry is now closely monitored. These are just a small number of cases that have been brought against funeral homes, directors, or cemeteries. There are many more cases where

lawsuits have been filed. Lawsuits have been brought against the industry for improper embalming, desecration of a body, voiding contracts; the list goes on and on. A large number of these lawsuits are warranted, some brought by unethical acts, others by simple mistakes. Once again, the profession deals with the public at a sensitive time, and caring, sincere practices can prevent the majority of these lawsuits from occurring. Funeral services will always be seen by some as a rip-off, as funerals can be very expensive. Funeral homes are constantly being trusted by others and these businesses should treat the customers' right and provide nothing but ethical practices. Funeral directors are still mostly caring individuals and enter the profession to assist those in need, but as you can see it only takes a few unethical people to make the entire industry look bad.

### ROLES OF SOCIOLOGY, MANAGEMENT, AND COMMUNITY AND REGIONAL PLANNING

As noted before, all three of these disciplines play a very important role in the operation of a funeral home, cemetery or crematorium. They have all contributed to the way that funeral homes are operated today, and will continue to do so in the future. Each is unique in its own sense, the first mainly regarding the social aspects of the profession, dealing primarily with different sex roles, cultures, and/or class differences. Management issues within the funeral vocation are the same as in any business, with constant pressure on the manager to operate the funeral home and employees to the best of his/her ability. Community and Regional Planning plays the most prominent role in the establishment and location of the business.

## **Sociology**

Funeral directors, bereavement counselors, and pre-need salespersons all deal with sociological issues on a daily basis. As shown before, these workers deal with a large variety of races, classes, etc. Both funeral workers and consumers are affected by gender biases. The takeover of family funeral homes by corporations has led to a decrease in women funeral home managers. Many women are still the Funeral Director in Charge (FDIC) at smaller, family owned funeral establishments. Although, after the recent surge of Service Corporation International, many women are finding themselves lower on the corporate ladder. Some are still employed as funeral home managers, but it is rare to find a regional manager or a female with higher rank. Although women are entering the profession in large numbers that does not mean that they still aren't facing discrimination. Many of these discriminations are hidden throughout labeling, chores, etc. Cline notes:

In their business-like attitudes, female funeral directors resemble their male counterparts, but across the board they do not receive equal pay for their professionalism. Through a series of manipulative device, such as relabeling jobs, shifting the focus of tasks done by men and women, these wages are often considerably lower for women (p. 124).

Some women aren't allowed to call themselves funeral directors (although they are trained as such) because if she did she would expect director's wages (p. 125). Women are still being discriminated against in other areas of the industry as well. "The central issue for women wishing to become funeral directors is the difficulty of getting a job in the first place. It is virtually taboo for a woman to enter undertaking in a management capacity" (p. 126). These sex roles set by the society and the industry itself gives an immediate disadvantage for women seeking to enter the profession.

Funeral personnel are also constantly dealing with different religions and beliefs. The funeral home is responsible for conducting a funeral consistent with the traditions and customs of the individual religions. Many of these traditions are considered sacred, and families expect the funeral ceremonies to be conducted to their wishes or demands. This practice puts a good deal of pressure on funeral directors to conform to the standards of the variety of religions. Different races and/or ethnicities expect different practices, and one must be willing to conform to those specific standards.

Individuals within the funeral field must also deal with issues relating to class and attitudes of the customers. As it has been shown, funerals are expensive and can reach into the thousands of dollars. Funeral workers must be sensitive to the different class structures they deal with, and not take advantage of the people that they are paid to assist with the difficult process. It was noted before, a large number of lawsuits stem from workers taking advantage of a variety of people. Deviant salespeople do nothing more than cause criticism for the industry, similar to individuals in all aspects of sales. Many individuals in society want nothing more than an inexpensive ceremony, and they should be allowed to have their wishes granted. Another factor to consider is attitudes of the clients. With the controversy surrounding the funeral industry, a trend is occurring with a large number of people expecting funeral homes to be nothing more than a rip-off. This could be the primary cause for negative attitudes about the industry, and can cause negative behavior toward funeral personnel as well. Dealing with different values, beliefs, and these differences in attitude and behavior makes it extremely difficult for a funeral director to please everyone.

## **Management**

Management issues within the funeral industry are issues that anyone in business deals with on a daily basis. Entrepreneurship plays a major role, with new funeral homes established quite often. Careful consideration is taken when establishing a new home, taking a look at many different facets that a funeral home requires. A complete business plan must be carefully evaluated and thoroughly researched if any venture capital or angel capital is expected. Entry strategies are also extremely important, whereas choosing the right strategy could be a large factor of success.

Again like “regular” businesses, whether corporate owned or not, managers deal with a variety of issues. Managers are partly responsible for employee attitudes and behaviors, and must possess acute problem solving skills. This is especially true for the funeral industry. Managers are held responsible if other funeral workers to not treat the services, family, etc. with dignity and respect. The FDIC is held accountable for mistakes in pre-need plans, problems with employees, and errors in pre-need plans. At times, funeral work can be especially mundane and tedious and managers are constantly required to keep up employee morale. Attitudes of funeral workers can differ, some using humor as a guide and others quietly conducting their business. Sexual harassment, workers compensation, and job autonomy issues are problems associated with every industry, and the funeral realm is no exception. Although I have no evidence relating these issues directly with funeral service, I would imagine that they are similar to other corporations’ averages.

Turnover in the funeral industry typically has a high rate, possibly due to the nature of the work. Again, although I have found no evidence supporting my ideas, the



trend seems to be that since the takeover of corporations, turnover has a higher rate. This is possibly caused by the lower pay, with funeral service professionals being paid less than in the past. SCI has turned the industry around, in a sense like McDonalds revolutionized the burger industry. It is all about efficiency, with a complete chain of command. Embalming is done now at a central location, allowing fewer embalmers to be employed. Certain individuals are employed only to transport bodies, and businesses recruited to perform, hair styling, flowers, etc. One FDIC may now manage 4-5 homes, whereas in the past each had their own manager. Job satisfaction seems to be less important today compared to profit. Although SCI has a large human relations department, most funeral establishments are relatively small and spread out, so employees have little or no access to this department. Many of these thoughts and ideas come from experience with working for Service Corporation International and privately owned funeral homes, and may not be the same position held by all employees of SCI.

### **Community and Regional Planning**

The largest factor that Community and Regional Planning plays in the funeral industry, in my opinion, would be during the establishment of a new location. There are many laws and regulations that dictate where a funeral establishment can be located. These restrictions vary from location to location, and careful consideration must be taken before a location can be finalized.

Although the zoning laws and city regulations play a very crucial role in forming a new establishment, there are a number of other facets that CRP can have a role. Planning within the city is vital to the development of a community. It not only affects city development, but can have a direct impact on each business as a whole. Location is

one of the key factors for a funeral home to be successful. Feasibility studies can be done on certain locations to determine the impact a funeral home may have. If selecting one city over others, pull factors, trade area capture, etc. can be extremely important.

Threshold sizes also can have an instrumental role. Individuals are able to figure a threshold size and determine which location would be best suitable. These studies allow individuals to choose the best location inside of a city as well. Understanding of these figures, plus knowledge of how planning works in regards to zoning, etc., can be the most beneficial aspect of building a funeral establishment. Grants, tax abatements, and numerous other incentives can be offered by a city or community to build in certain locations. Environmental planning also has an influence in the placement of crematorium, cemeteries, and funeral homes. There are a variety of laws and ordinances regarding the location these establishments can be built.

Many individuals in the funeral industry in smaller communities serve on local boards as well. The director that I worked for in a smaller community in Kansas was on the city council and numerous other organizations. These are some of the boards that have a major impact on the community. I have always had the desire to be a prominent figure in a community, and serving on these local boards will allow me to help the community to the best of my ability. These are just some of the many ways that planning relates directly to the funeral service profession.

## SUMMARY

The issues raised in regards to these three disciplines will continue to have a direct impact on the future of the funeral industry. Although there are a variety of topics that I did not address, it is evident that all three play a major role in the establishment and

continuation of a successful business venture. The discussion proves the importance of a wide variety of knowledge from many different areas. A successful owner/manager of a funeral home should be contentions of the Sociological aspects, as he/she will be faced daily with different classes, races and genders. As a manager, one will be responsible for the attitudes and performances of other employees, as well as running a successful business. As a planner, it has been proven that the importance of selecting the best location can play a vital role in the success of the business. The funeral industry is constantly changing, and is becoming more regulated each year. Careful consideration, planning, and ethical practices are the best way to ensure the success of the industry. Until the major players in the industry begin acting morally and the profession returns to being a service designed to help citizens at such a tragic time, the industry will constantly face criticism and it is rightfully so.

## REFERENCES

- Barley, N. (1995). Grave Matters. New York: Henry Holt and Company, Inc.
- Berton, J. (2002). Burning Issues. Metroactive News & Issues. Pp. 1-11.
- Board of Funeral Directors Association. (2002). Pp. 1-110.
- Bowman, L. (1959). The American Funeral. Washington, D.C.: Public Affairs Press.
- Bryce, R. (2002). The Dying Giant. [Http://www.salon.com](http://www.salon.com).
- Cline, S. (1995). Lifting the Taboo. London: Little, Brown and Company.
- Cochran, P. (2000). Last Rights. Herndon: Capital Books, Inc.
- Davis, K. (1999). Now We Know why The Grass Never Grew...They Never Stopped Digging. Kiplinger's Personal Finance Magazine.
- Federal Trade Commission. (2002). <http://www.ftc.org>.
- Fruehling, J. (1977). Sourcebook on Death and Dying. Chicago: Marquis Professional Publications.
- Funeral Consumers' Last Rights. (1977). New York: W.W. Norton & Company, Inc.
- Haas, C. (1994). The Consumer Reports Law Book. New York: Consumers Union of the United States, Inc.
- Habenstein, R. & Lamers, W. (1955). The History of American Funeral Directing. Milwaukee: Bulfin Printers, Inc.
- Jones, C. (1997). R.I.P. The Complete Book of Death and Dying. New York: HarperCollins Publishers, Inc.
- Kalish, R. (1972). Death and Dying. New York: Baywood Publishing Company, Inc.

- Mitford, J. (1963). The American Way of Death. New York: Simon and Schuster, Inc.
- Prior, L. (1989). The Social Organization of Death. London: The Macmillan Press, LTD.
- Professional Training Schools. (1991). Funeral Rites and Customs. Dallas: Professional Training Schools, Inc.
- O'Connell, P. (2000). Lawsuit Alleges Company Mishandled Ashes. Review Journal. <http://www.lvrj.com>.
- O'Neil, D. (2001). Lawsuit: Funeral Home Neglected Body. St Petersburg Times. <http://www.sptimes.com>.
- Platt, H. (1995). Your Living Trust and Estate Plan. New York: Allworth Press
- PR Newswire. (1998). Former Employees File Complaint Alleging Cemetery's Deceptive Practices. <http://www.findarticles.com>.
- PR Newswire. (1999). Parents Sue Two Funeral Homes Over Local TV Celebrity Interment. <http://www.findarticles.com>
- PR Newswire. (2001). Cemetery and Funeral Bureau Revokes Woodlawn Cemetery's License. <http://www.findarticles.com>.
- Quigley, C. (1996). The Corpse, A History. North Carolina: McFarland & Company, Inc., Publishers.
- Reader's Digest. (1995). Know Your Rights and How To Make Them Work For You. New York: Readers Digest Association, Inc.
- Reader's Digest. (1994). Legal Problem Solver. New York: Reader's Digest Association, Inc.

- Scott, R. (1981). The Body as Property. New York: The Viking Press.
- Searl, E. (1993). In Memoriam, A Guide to Modern Funeral and Memorial Services.  
Boston: Skinner House Books.
- Sloan, D. (1991). The Last Great Necessity. London: The Johns Hopkins University Press.
- Smith, R. (1996). The Death Care Industries in the United States. North Carolina: McFarland & Company, Inc., Publishers.
- Sutton, J. (2002). Funeral Operator Accused of Dumping Corpses in Woods.  
<http://www.budgetcasket.com>.
- The Cradle-to-Grave Legal Survival Guide. (1995). New York: Little, Brown and Company, Inc.
- The Dying Giant. (1999). Salon News. <http://www.salon.com>



## APPENDICES



# The Federal Funeral Rule

Most decisions about purchasing funeral goods and services are made by people when they are grieving and under time constraints. Thinking ahead may help you make informed and thoughtful decisions about funeral arrangements. In this way, you can carefully choose the specific items you want and need and can compare prices offered by one or more funeral providers.

Each year, Americans arrange more than 2 million funerals for family or friends. When arranging a funeral, consumers may not be initially concerned about costs. Still, many customers may spend more for a funeral than for almost anything else they buy. In fact, at an average cost of \$2,400, a funeral may be the third most expensive consumer purchase after a home and a car.

The Federal Trade Commission (FTC) developed a trade regulation rule concerning funeral industry practices, which went into effect on April 30, 1984. It is called the Funeral Rule, and its purpose is to enable consumers to obtain information about funeral arrangements.

In general, the rule makes it easier for you to select only those goods and services you want or need and to pay for only those you select. Now, for example, you can find out the cost of individual items over the telephone. Also, when you inquire in person about funeral arrangements, the funeral home will give you a written price list of the goods and services available. When arranging a funeral, you can purchase individual items or buy an entire package of goods and services. If you want to purchase a casket, the funeral provider will supply a list that describes all the available selections and their prices. Thus, as described in greater detail in the following sections, the FTC's Funeral Rule helps you obtain information about the cost and availability of individual funeral goods and services.

## Telephone Price Disclosures

When you call a funeral provider and ask about terms, conditions, or prices of funeral goods or services, the funeral provider will:

- **tell you that price information is available over the telephone.**
- **give you prices and other information from the price lists to reasonably answer your questions.**
- **give you any other information about prices or offerings that is readily available and reasonably answer your questions.**

By using the telephone, you can compare prices among funeral providers. Getting price information over the telephone may thus help you select a funeral home and the arrangements you want.

## General Price List

If you inquire in person about funeral arrangements, **the funeral provider will give you a general price list.** This list, which you can keep, contains the cost of each individual funeral item and services offered. As with telephone inquiries, you can use this information to help select the funeral provider and funeral items you want, need, and are able to afford.

**The price list also discloses important legal rights and requirements regarding funeral**

**arrangements. It must include information on embalming, cash advance sales (such as newspaper notices or flowers), caskets for cremation, and required purchases.**

### **Embalming Information**

The Federal Rule requires funeral providers to give consumers information about embalming that can help them decide whether to purchase this service. Under the Rule, a funeral provider:

- **may not falsely state that embalming is required by law.**
- **must disclose in writing that, except in certain special cases, embalming is not required by law.**
- **may not charge a fee for unauthorized embalming unless it is required by state law.**
- **will disclose in writing that you usually have the right to choose a disposition such as direct cremation or immediate burial if you do not want embalming.**
- **will disclose to you in writing that certain funeral arrangements, such as a funeral with a viewing, may make embalming a practical necessity and, thus, a required purchase.**

### **Cash Advance Sales**

The Funeral Rule requires funeral providers to disclose to you in writing if they charge a fee for buying cash advance items. Cash advance items are goods or services that are paid for by the funeral provider on your behalf. Some examples of cash advance items are flowers, obituary notices, pallbearers, and clergy honoraria. Some funeral providers charge you their cost for these items. Others add a service fee to their cost.

The Federal Rule requires the funeral provider to inform you when a service fee is added to the price of cash advance items, or if the provider gets a refund, discount, or rebate from the supplier of any cash advance item.

### **Caskets for Cremation**

Some consumers may want to select direct cremation, which is cremation of the deceased without a viewing or other ceremony at which the body is present. If you choose a direct cremation, the funeral provider will offer you either an inexpensive alternative container or an unfinished wood box. An alternative container is a non-metal enclosure used to hold the deceased. These containers may be made of pressboard, cardboard, or canvas.

Because any container you buy will be destroyed during the cremation, you may wish to use an alternative container or an unfinished wood box for a direct cremation. These could lower your funeral cost since they are less expensive than traditional burial caskets.

Under the Funeral Rule, funeral directors who offer direct cremations:

- **may not tell you that state or local laws require a casket.**
- **must disclose in writing your right to buy an unfinished wood box (a type of casket) or an alternative container.**
- **must make an unfinished wood box or alternative container available.**

## **Required Purchase**

**You do not have to purchase unwanted goods or services as a condition of obtaining those you do want unless you are required to do so by state law. Under the Funeral Rule:**

- **You have the right to choose only the funeral goods and services you want, with some disclosed exceptions.**
- **The funeral provider must disclose this right in writing on the general price list.**
- **The funeral provider must disclose on the statement of goods and services selected the specific law that requires you to purchase any particular item.**

## **Statement of Funeral Goods and Services Selected**

**The funeral provider will give you an itemized statement with the total cost of the funeral goods and services you select. This statement also will disclose any legal, cemetery, or crematory requirements that compel you to purchase any specific funeral goods or services.**

**The funeral provider must give you this statement after you select the funeral goods and services that you would like. The statement combines in one place the prices of the individual items you are considering for purchase, as well as the total price.** Thus, you can decide whether to add or to subtract items to get what you want. If the cost of cash advance items is not known at the time, the funeral provider must write down a "good faith estimate" of their costs. The Rule does not require any specific form for this information. Therefore, funeral providers may include this information in any documentation they give you at the end of your discussion about funeral arrangements.

## **Preservative and Protective Claims**

Under the Funeral Rule, funeral providers are prohibited from telling you a particular funeral item or service can indefinitely preserve the body of the deceased in the grave. The information gathered during the FTC's investigation indicated these claims are not true. For example, funeral providers may not claim embalming or a particular type of casket will indefinitely preserve the deceased's body.

**The Rule also prohibits funeral providers from making claims that funeral goods, such as caskets or vaults, will keep out water, dirt, and other grave site substances when that is not true.**

## **Other Considerations**

If you decide to make advance plans about funeral arrangements either for yourself or a loved one, you can choose among several types of dispositions and ceremonies. The type of disposition you choose may affect the cost. Some people prefer a ceremonial service, religious or secular, with the body present. Another service is cremation, which may be performed either directly or after a ceremony. In addition, the deceased body may be donated (either directly or after a ceremony) to a medical or educational institution. To help ensure that your wishes are carried out, you may want to tell relatives and other responsible persons what you have decided.

## **For More Information**

Most states have a licensing board that regulates the funeral industry. You may contact the licensing board in your state for information or help. You may also contact the Conference of Funeral Service Examining Boards, 520 E. Van Trees Street, P.O. Box 497, Washington, IN 47501; (812) 254-7887. This association, which represents the licensing boards of 47 states, will provide information on the laws of the various states and will accept and respond to consumer inquiries of complaints about funeral providers.

## APPENDIX B

DONEGAN, Justice.

This action is brought by the plaintiffs to enjoin the defendants from establishing and maintaining a funeral home and from conducting funerals upon premises owned by them on North Fifteenth street in the city of Clarinda, Iowa. The plaintiffs are all owners of property in the immediate vicinity of the property of the defendants. In their petition the plaintiffs allege that the block in which the defendants are about to establish such funeral home, and the block across the street and to the east thereof, are in a purely residential district, four blocks north of the business district of the city of Clarinda; that there are no business establishments on said street between the business district and the property of the defendants; that the maintenance of such funeral home will cause traffic congestion in the adjoining streets; that the receiving of dead bodies, the storing, embalming, and preparing the same for burial, the coming and going of many people, the assembling of crowds, and the congestion of traffic on the street and on the defendants' premises, and the conducting of funeral services in said funeral home will annoy and produce a depressing effect upon plaintiffs and their families, and will seriously interfere with the quiet and peaceable possession and enjoyment by plaintiffs and their families of their homes and premises; that the establishment and maintenance of said funeral home would cause the properties of said plaintiffs to greatly depreciate in value, and would cause plaintiffs irreparable injury; and that they have no adequate remedy at law.

For answer the defendants admit that the defendant W. F. Otte is engaged in the carrying on of an undertaking business in the city of Clarinda, Iowa, and that the defendant Alma Otte is a partner in said business; that the premises owned by them is their residence property and is located in a strictly residence district; that the plaintiffs are \*99 the owners of property and residents in the said district, as alleged in the petition; that defendants have taken some steps toward improving their house and yard, but not for the purpose of making a funeral home and morgue and for the purpose of holding funerals therein, and they deny that they are preparing to maintain same as a funeral home and morgue. Defendants deny that the conducting of funerals on their premises would cause traffic congestion in the adjoining streets, that they have any intention of storing and embalming dead bodies, preparing the same for burial, or holding funerals generally in connection with said premises; deny that they intend to assemble crowds on their premises; deny that the conducting of funerals thereon would have a depressing effect upon plaintiffs and their families; and deny that the conducting of funerals as contemplated by them would cause the properties of plaintiffs to greatly depreciate in value. Further answering, defendants allege that the defendant Alma Otte purchased the property for the primary purpose of a residence for herself and family; that they are residing on said premises and expect to continue to reside there; that the defendants own a place of business in the business section of said city of Clarinda where they keep and intend to keep all necessary supplies for preparing dead bodies for burial, including caskets and vaults, and where they **embalm** and prepare dead bodies for burial and intend to continue doing so in the future; that they have a chapel in said store building from which funerals are conducted; that most of the funerals conducted by them are from the homes of deceased persons or their relatives or from churches; that occasionally friends of the defendants desire to have a funeral in a home and that, in such cases, defendants

plan to conduct such funerals in their home; that such funerals will be infrequent, probably not more than two or three a year, and will be held in the living rooms of defendants' home; that defendants do not intend to have separate rooms set aside or to have a commercial funeral home or morgue on the said premises; that, in case of such funerals held on said premises of the defendants, they have sufficient parking places on the driveways in the back yard of said premises to park all cars that would assemble for such funerals, and there will be no congestion of traffic on the streets.

Upon the trial of the case the trial court found in favor of the plaintiffs and entered a decree permanently enjoining the defendants from establishing or maintaining a funeral home on the premises herein involved, from conducting funerals therefrom, from receiving and discharging dead bodies therefrom, from embalming dead bodies thereon, and from establishing or maintaining a morgue on said premises. From this decree the defendants appeal.

The facts are that the plaintiff J. W. Bevington lives immediately south of the defendants' premises, and the plaintiff Baumgarten immediately north thereof. The plaintiffs Swanson, Brooks, Anna, and McNeal live in the block across the street and east of the block in which the properties of the plaintiffs Bevington and Baumgarten and of the defendants are situated. The plaintiff Mrs. J. D. Palmer lives directly west of and adjoining the property of the defendants. Her property faces west on Sixteenth street and there is no alley between it and the defendants' property. All of the plaintiffs are the owners of the properties in which they live, and most of them have owned and lived in these properties for several years. The property of the defendants was formerly owned by Herman Otte, by whom it was occupied as a residence, and it was acquired by the defendants in July, 1935. Shortly after acquiring this property the defendants made some changes therein and took some steps toward making use of said property as a funeral home from which funerals would be conducted in connection with the business owned and operated by them. The defendants had for some time been engaged in the furniture business in Clarinda and, in connection with this business, they also operated an undertaking business. The property of the defendants here in question has a frontage of 65 feet on the west side of Fifteenth street and extends east and west 150 feet. The south side of the main portion of defendants' house is approximately 35 feet from the north side of the residence of the plaintiff Bevington, but the roof of a porch extends over a driveway on the south side of defendants' house and is within about 19 feet of the north side of the Bevington residence. A driveway, which enters near the north line of defendants' property, extends westward to and around the rear of the house and then eastward along the south side of the house to Fifteenth street, passing under the porch above referred to. It appears from the evidence that on the south side of defendants' house, where this driveway passes under this porch roof, the defendants constructed a platform, onto and from which the bodies which were to be buried from the funeral home were to be unloaded and loaded. The north side of the defendants' house is approximately 44 feet from the south side of the main portion of the Baumgarten residence. The width of Fifteenth street from property line to property line is 80 feet, and the distance between the defendants' property and the residences of the plaintiffs living on the east side of the street varies according to the location of said residences as to being directly opposite or north or south of the property of the defendants. The evidence shows without dispute that the entire district in which the properties of plaintiffs and defendants

are located is a purely residential district, and that there is no business establishment of any kind on Fifteenth street nearer than the business section of Clarinda, which is four or five blocks from the property of the defendants.

The evidence introduced in behalf of the plaintiffs was to the effect that the establishment and maintenance of a funeral home on the defendants' property would result in annoyance to the plaintiffs, because of the proximity of said funeral home to their respective residences, and because of the congestion of traffic and the gathering of crowds in attendance upon funerals and the noises incident thereto; that the receiving of dead bodies upon said premises, the unloading, loading, storing, embalming, and preparation of same for burial, together with the funeral music, dirges, and sermons in connection with funerals, which would be heard by the plaintiffs in their residences, would have a depressing effect upon the plaintiffs and the members of their families and would interfere with the quiet and peaceable possession and enjoyment by them of their homes and premises. Evidence was also introduced in behalf of the plaintiffs tending to show that the establishment of a funeral home would cause a depreciation in their properties varying from 10 to 50 per cent., according to the proximity of the respective properties to the property of the defendants.

The defendants' evidence tended to show that it was not their intention to use their property for the general purpose of carrying on a funeral home and holding all, or even a considerable number, of the funerals conducted by them on these premises; that it was their intention to occupy the said premises as a home, and that the only funerals that would be conducted therefrom would be in cases where friends of the defendants, who had no residence suitable for the holding of a funeral, would desire such funeral to be conducted from a funeral home instead of from a church or from the downtown place of business of the defendants; and that, by far the greater number of funerals conducted by the defendants would not be conducted from these premises. They also introduced some evidence tending to show that the use which they intended to make of the premises would not cause any depreciation in the properties of the plaintiffs.

[1] The courts have not always been agreed as to when an undertaking establishment or funeral home constitutes a nuisance. It seems well established by authority that a funeral home or undertaking establishment is not a nuisance per se, but that it may become a nuisance under certain circumstances. While some courts still hold that an undertaking establishment or funeral home, even in a residential section, is not a nuisance, we think the trend of authority is clearly to the contrary. As said in Thompson v. Ketterle, 34-21121, 213 N.W.2d 214, 41 ALR 1155, "An undertaking establishment is not a nuisance per se. The business of preparing dead bodies for burial is not only lawful but indispensable. It may become a nuisance, however, from the manner in which it is conducted or because of the place at which it is maintained, and it is very generally held to be such when it intrudes itself into a strictly residential district. Boyd v. Smith, 17-14444, 173 N.W. 271, 30 Mich. L. Everett Court

## APPENDIX C

CASE #2The plaintiff is a resident of Johnson county, Iowa, and the defendant is engaged in business as an undertaker and embalmer at Iowa City, in that county. The petition alleges that on December 5, 1912, the mother of plaintiff died in said county under circumstances which left plaintiff entitled to the custody and control of his said parent's body and to control its care and preparation for burial; that after her death, and without plaintiff's knowledge or consent, the body of the deceased was removed to the undertaking parlors of the defendant, who assumed to receive it and the duty of caring for and preserving it for the plaintiff, but, instead of so doing, defendant, without right or authority, permitted said body to be dissected, mutilated, and parts thereof to be removed, all of which acts were done wrongfully and maliciously, and in reckless disregard of the plaintiff's right to receive the body in the condition in which it was when life departed therefrom. Because of this trespass upon his rights, by the abuse and mutilation of his mother's body by or with the consent of the defendant, plaintiff alleges he has been made to suffer great mental injury and pain, and he demands recovery of damages. The alleged cause of action is pleaded in various counts, but what we have here stated sufficiently reveals the general nature of the plaintiff's claim.

Answering the petition, the defendant denies the same, and further says that the dead body was delivered to him by the State University Hospital of Iowa, with directions to **embalm** it, and with the information that said hospital, by its authorized agents or surgeons, would make a post mortem examination thereof. He further says he had no knowledge of the identity of the deceased person, was not present at the autopsy, and had nothing whatever to do with it; that the deceased was in part a county patient, and admitted to the hospital as such, and that the hospital staff had the right to make the examinations. Further answering, he says upon information and belief that plaintiff consented to the examination, that the same was conducted in a decent and proper manner by the medical staff of the University Hospital, in the exercise of their regular and proper duties and functions as such.

The answer as above recited was not attacked by motion or demurrer, but, plaintiff having joined issue thereon by reply, the parties proceeded to trial to a jury. The facts as they appear in the record without substantial dispute are as follows:

The deceased, Mary Konecny, had for some years been a resident of Johnson county. She was a widow with six children, all, except a married daughter, living together as a single family. The plaintiff, Frank Konecny, and his brother, Louis, were of age, but the remainder of the children were minors. In October of 1912 the mother became ill and entered the Hospital of the Iowa State University for treatment, and continued there until her death on December 5, 1912. At this time, and for a considerable period prior thereto, the defendant was an undertaker doing business in Iowa City. He was also a licensed embalmer. For the transaction of his business he maintained a building in the city suitably fitted and arranged for that purpose. There were also other establishments in the city in which other persons carried on a similar business.

It was the practice and custom of the hospital and its medical staff to hold autopsies upon the bodies of patients dying there, whenever the consent of the family or friends of the deceased could be obtained for that purpose. Such examinations were in fact held in

perhaps three-fourths of the cases of deaths occurring there. The hospital did not have suitable rooms or conveniences for such work, and its custom was, when a death occurred and an autopsy was to take place, to send the body to one of the several undertaking establishments in the city to be embalmed, after which the medical staff of the University, or some one or more members thereof, would make the examination. On the day of the death of Mrs. Konecny, and within a short time after it occurred, the officer in charge at the hospital called up the defendant, informing him that a death had taken place there and a post mortem examination was to be held, and inquired how soon he could take the body and have it ready for the autopsy. He responded, in substance, that it could be done in the course of an hour. Thereupon he sent his assistant, Sample, to attend to the matter. Following instructions, Sample went to the hospital, received the body, took it to a room used for that purpose in defendant's building, and there embalmed it. Later, two or more members of the hospital medical staff went to the room where the body had been embalmed and began its examination. In performing this work they or some of them opened up the body and removed therefrom and examined some of the viscera. Neither the defendant nor Sample participated in or was present at this operation or examination. Before the examination was completed, the plaintiff, accompanied by one Murphy, another undertaker, appeared at defendant's place of business and inquired if his mother's body was there, and on learning the fact asked for its delivery to him. There is dispute as to much of the conversation which ensued, but it seems to be conceded that defendant said in substance that a post mortem examination of the body was being held, and it would take some time to prepare it for such delivery; but plaintiff, or Murphy, being insistent, defendant went \*903 to the door of the embalming room and called out one of the physicians, with whom a short discussion was had. The body was then transferred to a receptacle brought by Murphy and taken away by him.

Appellee's counsel concede that, if the post mortem examination of this body was made by the physicians without plaintiff's consent, the act constitutes a legal wrong for which the law affords a remedy. It is also conceded that the fact whether such consent was given is in dispute, and that if the question be a vital one in this case the issue should have been submitted to the jury. They contend, however, and that is the question with which we have to deal, that, even assuming that no consent is proved, the record still makes no case against the defendant, and with that view we are disposed to agree.

[1][2] There is no evidence fairly tending to show that defendant was present at, or assisted in, or took any part in, the autopsy. The most which can be said in this respect is that it took place in his building, and that he knew such examination was contemplated by the physicians, and that it was being performed on his premises. If such examination was wrongful, and he with knowledge of the wrong furnished the perpetrators a room or place or conveniences for its performance, such aid and assistance might well be held sufficient to charge him with participation in the wrong and therefore with joint liability. But the doing of an act which is in itself perfectly lawful will not render one liable as for a tort, simply because the unintended effect of such act is to enable or assist another person to do or accomplish a wrong. The defendant had an unquestionable legal right to maintain a building or place in which to do business as an embalmer or undertaker. He had just as clear a right to permit the hospital and its physicians to use a room in his building as a place for holding post mortem examinations. He could reasonably and properly assume that the hospital authorities and its medical staff would not abuse such privilege, by using



it for an unauthorized autopsy. He was charged with no duty to supervise such use, or to ascertain at his peril in each instance whether proper consent had been obtained for the examination of a body brought or sent to his place by the hospital itself.

[3] The record is barren of any testimony tending to show guilty knowledge or unlawful purpose or intent on part of defendant, and in our judgment it must be said there is a failure of proof of any act or omission on his part rendering him justly chargeable with damages for the wrong, if any, committed by the physicians. His only connection with the transaction was to receive and **embalm** the body, a very proper service, which is not the ground of complaint in this action. He received the body from the hospital, and until some one appeared disclosing a better claim of right or authority to control its care and disposition, he cannot be charged with wrong in recognizing the authority of the hospital to give directions for its care and keeping.

There was no evidence upon which the plaintiff was entitled to go to the jury, and the court did not err in directing a verdict for defendant. The conclusion thus reached renders quite immaterial other assignments of error, and we pass them without further discussion. The judgment below is therefore affirmed